

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

ALLEN KELLY,	:	CIVIL ACTION NO. 1:14-CV-2322
	:	
Plaintiff	:	(Chief Judge Conner)
	:	
v.	:	
	:	
J.T. MERRILL, <i>et al.</i>,	:	
	:	
Defendants	:	

ORDER

AND NOW, this 14th day of January, 2016, upon consideration of the report (Doc. 35) of Chief Magistrate Judge Martin C. Carlson, recommending that the court dismiss the complaint (Doc. 1) of *pro se* plaintiff Allen Kelly (“Kelly”) with prejudice against defendants Jon Fisher, Kevin Kauffman, Robin M. Lewis, John E. Wetzel, Shirley Moore-Smeal, S. Woodring, Dan Caro, Donna Varner, Tracy Williams, and Lisa Hollibaugh in light of plaintiff’s failure to amend his pleading in response to Judge Carlson’s antecedent report (Doc. 26), and, following an independent review of the record, the court being in agreement with the magistrate judge that Kelly has forfeited the opportunity to amend his pleading through inaction, (see Doc. 35 at 3-4), and the court noting that Kelly has filed an objection (Doc. 37) to the instant report, see FED. R. CIV. P. 72(b)(2), wherein Kelly requests an additional extension of time in which to amend his pleading, and contends that the magistrate judge did not permit him a “reasonable amount of time to amend his complaint” relative to his inmate status and attendant limitations, and following a *de novo* review of the

contested portions of the report, see Behar v. Pa. Dep't of Trans., 791 F. Supp. 2d 383, 389 (M.D. Pa. 2011) (citing 28 U.S.C. § 636(b)(1)(C); Sample v. Diecks, 885 F.2d 1099, 1106 n.3 (3d Cir. 1989)), and applying a clear error standard of review to the uncontested portions, see Cruz v. Chater, 990 F. Supp. 375, 376-78 (M.D. Pa. 1999), the court finding Judge Carlson's analysis to be thorough, well-reasoned, and fully supported by the record, and further finding Kelly's objection to be without merit, specifically noting that Kelly has had more than four (4) months to file an amended pleading but has failed to do so, it is hereby ORDERED that:

1. The report (Doc. 35) of Chief Magistrate Judge Carlson is ADOPTED.
2. Plaintiff's complaint (Doc. 1) is DISMISSED with prejudice against defendants Jon Fisher, Kevin Kauffman, Robin M. Lewis, John E. Wetzel, Shirley Moore-Smeal, S. Woodring, Dan Caro, Dorina Varner, Tracy Williams, and Lisa Hollibaugh.
3. This matter is REMANDED to Chief Magistrate Judge Carlson for further pretrial management.

/S/ CHRISTOPHER C. CONNER
Christopher C. Conner, Chief Judge
United States District Court
Middle District of Pennsylvania